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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,246	12/20/2001	Jeffrey E. Fish	KCX-400 (15421)	9059
22827	7590	02/21/2006	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			BEFUMO, JENNA LEIGH	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 02/21/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/027,246		FISH ET AL.	
	Examiner		Art Unit	
	Jenna-Leigh Befumo		1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-25 and 27-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-25 and 27-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. The response submitted on December 22, 2005 has been entered. Claims 1 – 8, 10 – 25, and 27 – 30 are pending.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1 – 8, 10 – 25, and 27 – 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. (4,892,535) in view of Tanzer et al. (5,411,497) for the reasons of record.

4. Claims 1 – 8, 10 – 25, and 27 – 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. for the reasons of record.

Response to Arguments

5. Applicant's arguments filed December 22, 2005 have been fully considered but they are not persuasive. The applicant has maintained the arguments set forth in the previous response. These arguments have been addressed in the previous Office Actions and are reiterated below.

6. The applicant argues that the back sheet of Bjornberg et al. remains substantially flat (response, pages 7 – 9). The applicant base this on the lack of disclosure in Bjornberg et al. describing the backsheet as being three dimensional and the picture showing a mostly flat backsheet.

First, the drawings, while supplied to represent the actual product, are not considered to be exact replicas of the finished product and therefore, cannot be used to determine with certainty whether the back sheet would be completely flat or have some degree of texturizing.

Second, as set forth in the previous Office Action, the product disclosed by Bjornberg et al. is produced by the same method as the applicant uses to produce the claimed product. As shown in the applicant's own pictures describing the method, the layers are bonded together by running the composite through two rollers where one roller is engraved with a bonding pattern. The base layer of the composite is mostly flat prior to passing through the rollers. Thus, the texturing in both layers is a result of the forces applied to the fabrics during the bonding process, as well as the pressure of the material in the pockets, pushing on the outer layers. And, if nothing else the bonded regions formed between an engraved roller, with heat and pressure, would be compressed to some degree in both outer layers as compared to the unbonded regions of the outer layers, creating depressions on both layers. Hence, the Bjornberg et al. fabric would inherently have some degree of texturing, forming elevations and depressions, in both outer layers as a result of bonding the layers together.

Further, the applicant argues that the base layer would remain *substantially flat*. The claim does not require a specific amount of height difference between the recesses and elevations to produce a textured product. Therefore, any degree of texture, such as slightly compressed or embossed regions or slightly raised regions, would read on the present limitation. Hence, a product which is *substantially flat* is not perfectly flat and can be slightly textured. This minor amount of texturing meets the texturing limitations as currently claimed. Finally, the back sheet is made from a flexible substrate material which will readily change shape in response to processing and additional force or pressure added by the particles in the pocket region. Thus, the material would not remain completely flat unless backing layer is reinforced in some manner. Therefore, in the absence of a flattening or reinforcing means, the backing layer will flex and

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change shape as a result of processing steps to produce the composite, and hence, be textured to some degree.

7. The applicant also argues that Baer et al. fails to teach the claimed invention because Baer et al. doesn't explicitly teach the claimed length to width ratio of the pocket regions (response, pages 9 and 10). As set forth previously, Baer et al. does disclose that the dimensions of the pockets can be various sizes and shapes and shows different shaped and sized pocket regions in the figures. Thus, it would be obvious to one of ordinary skill to change the size and shape of the pockets as taught by Baer et al. Additionally, In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

The applicant argues that a ratio between 4 and 100 is unobvious because this property facilitates delamination of the pockets upon application of force. However, the applicant has provided no evidence to show that the claimed length to width ratio produces any unexpected properties with regards to the delamination properties of the pockets or that these ratios would in any way be unobvious to one with ordinary skill in the art. The arguments of counsel cannot take the place of evidence. *In re De Blauwe*, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). And Baer et al. discloses various patterns of pocket shapes, in the drawings, which could be used to create the composite material. Thus, Baer et al. provides sufficient teachings to show that changing the pocket shape would be obvious with a reasonable expectation of success, and

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without sufficient evidence to show that an advantage is gained by the claimed ratio between 4 and 100, and that this advantage would not be expected, the rejection is maintained.

Also, the applicant argues that the prior art fails to teach that the inner regions are capable of delaminating upon application of a force, while the perimeter region withstands the force (response, page 10 – 11). The applicant's response summarizes the teaching of Baer et al. with regards to delamination, including the statement that in some cases, the pressure caused by the swelling of the SAP particles can rupture the bond lines in the pockets thereby increasing the available volume and flow into the adjacent, less saturated pockets (response, page 10). This statement explicitly teaches that the bond lines *around* the pockets will rupture (or delaminate) due to the swelling of SAP particles (which is an application of a force to the composite) while the remaining pockets and outer regions will stay sealed. Thus, the teaching of Baer et al. does teach the claimed limitation.

Further, the fact that the delamination is a secondary result of the prior art structure is not sufficient to overcome the rejection. The prior art needs only have the claimed structure and does not need to produce the claimed structure for the same reasons as the applicant teaches. The fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Therefore, the rejections are maintained.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

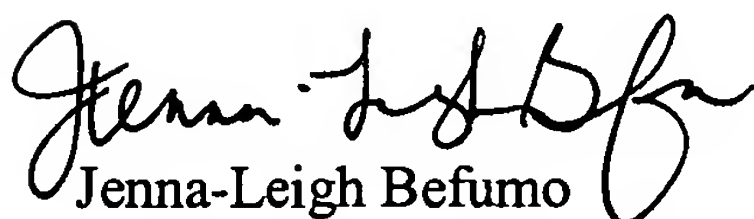
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jenna-Leigh Befumo